IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4234 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHRINATH TOOLS CENTRE

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR KA PUJ for Petitioner

MR AKIL QURESH FOR MR.M.R.BHATT for Respondent No. 1, 2

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE C.K.BUCH

Date of decision: 17/02/2000

ORAL JUDGEMENT (PER : J.N.BHATT,J)

In this petition under Article 226 of the Constitution of India, the main relief which is sought by the petitioner, which is a partnership firm dealing in the business of welding accessories etc., pertains to the waiver of charging of interest and initiation of penalty proceedings in respect of the Assessment Years 1981-82 to 1986-87.

2. The impugned order of respondent no.1 Commissioner of Income Tax dated 24.2.1992 under sec. 273A(1) of the Income Tax Act, 1961, indicates that the interest charged under sec.139(8) and 217 of the Income Tax Act,1961, for the Assessment Year 1980-81 is fully waived in purported exercise of powers under section 273A of the Income Tax Act, 1961. Whereas, the assessee firm had claimed by the letter dated 5.1.1989 for waiver of penalty imposable under sec. 271(1)(a) and interest charged under sec. 139(8)and sec.217 of the Income Tax Act, 1961 for the Assessment Years from 1980-81 to 1986-87. Unfortunately, the order does not deal with the claim in respect of remaining six assessment years. It is also not clear from the impugned order that assessee firm is ineligible for the claim for remaining six assessment years. Whereas, against that, the petitioner has categorically averred in the petition that requisite conditions for entitlement parameters are fulfilled even in respect of remaining six years and, therefore, waiver of penalty and interest charged ought to have been given for the remaining six assessment years. Such averments made in the petition have not been controverted by filing affidavit in reply and again, claim for remaining six assessment years made by the assessee firm in respect of interest is less than Rs. 6000/ and in respect of penalty the claim is less than Rs. 16,000/.

3. Although, ordinarily, the Court directs the authority concerned to reconsider the claim or case of the party upon being satisfied (by the Court) for reconsideration and it is for the authority to reconsider and pass appropriate orders or directions,(however,)there are peculiar facts and special circumstances, in addition to the pettiness of amount involved, which commands departure from the normal course and, therefore, it would be quite justifiable, expedient and necessary in the circumstances, without forming or being a precedent for future, to pass a direction to respondent no.1 in modification of the impugned order for remaining six assessment years since material requisite conditions, stated to have been satisfied, have remained uncontroverted. Respondent No.1 is, therefore, directed to reconsider and pass orders in the light of the aforesaid observations, within a period of three months

from the date of receipt of the writ of this Court so as to see that dispute which is at a micro level and involving petty amount, is ceremoniously ended.

4. With these observations, petition is partly allowed without any order as to costs. Rule is made absolute accordingly.

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